



Agenda Number: 11
Case Number: BA-20100011/ZA-20100031
Hearing Date: July 7, 2010

Appellant: Manuel & Rosa A. Guerrero
1006 Los Puentes Dr. SW
Albuquerque, NM 87105

Agent:

Applicant: Manuel & Rosa A. Guerrero
1006 Los Puentes Dr. SW
Albuquerque, NM 87105

Agent:

Site Location: 1006 Los Puentes Dr. SW

Zone Designation: R-1 Single-Family Residential

Recommendation: Denial

VICINITY MAP

Summary: This request is an appeal of the Zoning Administrator's denial of a variance of 10 feet to the required front yard setback distance. The appellant seeks approval to allow the continued placement of an unpermitted carport located just 10 feet from the front property line.

Staff Contact: Brennon Williams, Zoning Administrator

Attachments:

1. Appeal application
2. Notice of Decision (April 20, 2010)
3. Original application with provided site plan
4. Agency comments for ZA application
5. Aerial photograph, zone atlas page

Manuel Guerrero appeals the Zoning Administrator's denial of a variance of 10 feet to the required front yard setback distance on Tract 2, Los Puentes Subdivision, located at 1006 Los Puentes Dr. SW, zoned R-1, and containing approximately .219 acres. (L-11) (Original request submitted by Manuel & Rosa A. Guerrero)

BACKGROUND

The Request

The appellant is requesting approval of a variance of 10 feet to the required front yard setback distance to allow the continued placement of an unpermitted carport at 10 feet from the front property line.

The Property

The subject site is located at 1006 Los Puentes Dr. SW, zoned R-1, and is approximately .219 acres in area.

The Hearing

The original request was presented at the Zoning Administration hearing held on April 13, 2010. The property owner, Manuel Guerrero, presented the request. Mr. Guerrero testified that with the assistance of a friend, the subject carport was constructed approximately 6 months prior. He stated that although he had over ten years experience in the construction industry, he wasn't aware that a permit was required to add a carport to the existing dwelling. He indicated that the property met the criteria for approval of a variance because the driveway was not level; that during the winter, snow and ice would often form on the driveway; and that his children sometimes played in the driveway and the carport provided them with shade and protection from the elements. The written explanation provided with the request listed an "irregular shaped lot" and "steep driveway" as justification for the variance.

The Decision

The Zoning Administrator denied the request based on findings that the property did not possess any peculiar, exceptional and unusual circumstances nor was the need for the variance limited to allow the owner reasonable use of the site. Although the reasons listed by owner to justify the request were understood by the ZA, these facts centered around the owner's development desires for the property rather than a unique circumstance only affecting the subject site. Additionally, it was noted that the county had twice red-tagged the property (April 2008 and September 2009) for unpermitted construction activities.

APPLICABLE REGULATIONS

Comprehensive Zoning Ordinance of Bernalillo County.

Section 9. R-1 Single-Family Residential Zone.

- A. The regulations set forth in this section or set forth elsewhere in this ordinance, when referred to in this section, are the regulations in the R-1 Residential Zone. The purpose of this zone is to provide for the development of single-family homes on lots not less than three-quarters [of an] acre in area, except that where community water and sewer facilities are made available, the lot size may be reduced consistent with development densities in the Albuquerque/Bernalillo County Comprehensive Plan. The regulations provide for the health, safety and welfare of the residents.
- B. Use Regulations. A building or premises shall be used only for the following purposes, all uses customarily incidental to the building or premises shall be maintained on site:
 1. Prohibited Uses. The following uses are prohibited in this zone:
 - a. The open storage of inoperative vehicles or auto parts;
 - b. The open storage of trash or junk;
 - c. The open storage of large appliances;
 - d. Any use not designated a permissive use or conditional use in this zone, unless otherwise authorized by this Code; or
 - e. Any use not recognized as customarily incidental to a permitted use in this zone.
 2. Permissive Uses:

- a. Agricultural activity, including truck gardening and nurseries, fur bearing animal farm, the raising of poultry or rabbits, dairy farming, livestock grazing, feeding, and the raising of livestock on lots containing three acres or more. On lots of less than three acres, there shall be at least 10,000 square feet of lot area for each cow or horse, and/or at least 4,000 square feet of lot area for each sheep, pig, or goat, provided that any building, pen, or corral where such animal is located is at least 20 feet from any existing dwelling unit. Stands for the display or sale of home-raised agricultural products, including poultry or rabbits raised on the premises.
 - b. One single-family dwelling or H.U.D. Zone Code II manufactured home per lot.
 - c. Accessory building, structure, or use customarily incidental to the above uses, such building or structure shall be limited to an area of 600 square feet or less.
 - d. Noncommercial library, museum, and art gallery.
 - e. Recreational vehicle or boat storage in the rear yard when such recreational vehicle or boat is not to be used as accessory living quarters, and is not connected to utilities, other than temporarily to a source of electricity. Recreational vehicle used for dwelling purposes served only by electricity for lighting purposes, the use of such recreational vehicle shall be limited to a maximum of two weeks in any calendar year.
 1. In the event where rear yard access is not available, outside parking in the front yard is allowed, provided:
 - (a) The body of the recreational vehicle or boat is at least 11 feet from the front property line.
 - (b) No part of the unit extends onto the public right-of-way.
 - (c) A corner lot is always deemed to have reasonable access to the rear yard; a fence or wall is not necessarily deemed to prevent reasonable access.
 - f. Signs not exceeding eight square feet in area pertaining to the lease, hire, or sale of a premises or sale of home-raised products, provided there shall be no more than one such sign on each lot and provided further that, if illuminated, the source of such illumination shall be nonoscillating and nonflashing.
 - g. Parking incidental to uses permitted in this zone, provided all vehicles which are not parked inside a building are operative and are not wholly or partially dismantled.
 - h. Home occupation.
 - i. Concealed Wireless Telecommunications Facility, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - j. Wireless Telecommunications Antenna located on a public utility structure, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - k. Amateur Radio Antenna/Tower up to 65 feet as measured from grade.
 - l. Garage or yard sale, provided:
 1. No more than four events are allowed at a given dwelling in any calendar year. The duration of the garage or yard sale shall not exceed three consecutive days.
 2. No items shall be purchased for a garage or yard sale for the purpose of resale; items shall be of the type normally accumulated by a household.
 3. One non-illuminated, on-premise sign, not exceeding four square feet in area shall be permitted. The sign shall pertain to the garage or yard sale only and shall be permitted only for the three-day period of the sale.
3. Conditional Uses. The following uses may be permitted if approved by the Zoning Administrator in accordance with the procedures and under the conditions set out in the administrative Section of this ordinance with additional requirements deemed necessary to safeguard the best interest of the adjoining property, neighborhood and the community.
- a. Accessory building or structure in excess of 600 square feet in area and incidental to the uses listed under Section 7.B.1. and 7.B.2.
 - b. Amateur Radio Antenna/Tower 65 to 100 feet as measured from grade.
 - c. Church and incidental facilities.
 - d. School.
 - e. Day Care Center.
 - f. Family Day Care Home.
 - g. Temporary festivals, circuses, carnivals or activities in a tent, provided that the use or activity meets the following requirements:

- (1) The minimum lot size per use or activity shall be five acres.
- (2) All required parking shall be located on the same site with the activity or use.
- (3) The use or activity shall be at least two miles from the nearest conforming residential use.
- (4) Prior approval of the proposed use or activity must be obtained from the County Sheriff, County Fire Department, County Environmental Health, County Public Works, City of Albuquerque Air Pollution Control, and Albuquerque Metropolitan Arroyo Flood Control Authority or their authorized representative.
- (5) The hours of operation, shall be between 6:00 a.m. and 8:00 p.m. This includes the time of erection and dismantling.
- (6) The use or activity shall be limited to three days in one calendar year.
- (7) No permanent structures shall be erected.
- (8) Temporary fencing may be erected, and shall be removed within 24 hours after the activity.
- h. Real estate sales office and real estate signs exceeding the limitations in Subsection 8.B.(1).f. above in connection with a specific development for a period of not more than two years.
- i. Recreational facility (nonprofit) such as swimming pools or tennis clubs on sites containing not less than one acre.
- j. Temporary storage building or yard for equipment, material or activity incidental to a specific construction project but not to exceed one year, unless the time is extended by the Zoning Administrator.
- k. Mobile home used as a dwelling (with connections to any utilities) during construction of a dwelling on the same premises, provided such use shall be limited to a maximum period of 24 months.
- l. One mobile home for a three-year period in addition to an existing single-family dwelling or mobile home on a lot provided it complies with the following requirements:
 - (1) The mobile home may be used only by members of the immediate family for the purpose of providing assistance to those members of the family who are elderly, ill, mentally or physically disabled as attested by a licensed physician.
 - (2) The mobile home shall be connected to water and sewage disposal facilities approved by the Department of Environmental Health.
 - (3) The mobile home must be placed on the property in conformance with the setback requirements and located at least 15 feet from any structures on the same or on adjoining property.
 - (4) Placement of a mobile home on the property will not seriously conflict with the character of the area or be detrimental to the values of surrounding properties.
- m. Nonprofit animal facility.
- n. Park.
- o. Home occupation where the business includes visits to the site from clients, customers, patients, patrons, or similar individuals. Such home occupations may allow for employment of one non-family member and may be approved for a period of time not to exceed three years.

C. Height Regulations. Buildings and structures shall not exceed 26 feet or 2 1/2 stories in height, except as provided in The Supplementary Height and Area Regulations Section of this ordinance.

D. Area Regulations:

1. Minimum Lot Area and Lot Width. Every lot shall have a minimum area of not less than three-quarters [of an] acre and a minimum lot width of 60 feet, except that where community water and sewer facilities are available, the lot area may be decreased to 8,000 square feet if located in the Developing, Established or Central Urban Areas, or 14,520 square feet if located in the Semi-Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan.
2. Front Yard.
 - a. There shall be a front yard having a depth of not less than 20 feet except as provided in the Supplementary Height and Area Regulations Section of this ordinance.
 - b. Where lots have double frontage, the required front yard shall be provided on both streets.
3. Side Yard:
 - a. Except as hereinafter provided in the following paragraph and in the Supplementary Height and Area Regulations Section of this ordinance, there shall be a side yard on both sides of a building the aggregate width of which shall be not less than 14 feet, provided, however, that neither such yard shall be less than six feet in width.

- b. Wherever a lot of record, at the effective date of this ordinance, has a width of less than 60 feet, each side yard may be reduced to a width of not less than ten percent of the width of the lot, but in no instance shall it be less than three feet.
- 4. Rear Yard. Except as hereinafter provided in the Supplementary Height and Area Regulations Section of this ordinance, there shall be a rear yard having a depth of not less than 15 feet.

E. Parking Requirements. Off-street parking for all uses must be provided in accordance with the regulations set forth in the Off-street Parking, Loading and Unloading Regulations Section of this ordinance.

Section 24.A.2. Administration. Zoning Administrator. Powers and Duties.

h. Investigation of Applications:

- (1) Investigate all applications for variances from the height, area, parking or density regulations of this ordinance, and to grant such applications to the extent necessary to permit the owner reasonable use of his land in those specified instances where there are peculiar, exceptional, and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned.
- (2) Investigate all applications for an extension of the time limitations authorized by the Nonconforming Use Regulations Section of this ordinance or for an expansion of up to 25 percent of the original floor area for residential uses in residential zones, and to grant such applications if the use does not seriously conflict with the character of the surrounding area and in case of expansion of the use the site is adequate in size and shape to accommodate such expansion and the expansion does not increase the number of dwelling units on the lot or in any structure.

Agency Comments

Comments received for this request from the Bernalillo County Building Department stated that proper permits for all existing work will be required.

INFORMATION SUBMITTED FOR THE APPEAL

The appellant has not provided information to justify the appeal.

Analysis Summary

CRITERIA	APPEAL INFORMATION	STAFF ANALYSIS
Property possesses exceptional, peculiar, and unusual characteristics?	- This issue has not been addressed in the materials provided for the appeal.	- The property is similar to others in the neighborhood and immediate area.
The reported unique characteristics are unique to the subject site?	- This issue has not been addressed in the materials provided for the appeal.	- Previously reported differences (shape, steep driveway, snow/ice, area for children to play) do not pertain to the use of the property as intended by the zoning ordinance, but are based solely on the development desires of the owner. - The variance request is simply an attempt to correct a self-created hardship.
The proposed variance is limited in scope only to the extent to allow the owner reasonable use of the land?	- This issue has not been addressed in the materials provided for the appeal.	- All R-1 property owners, whether in the same neighborhood as the subject site or at a different location within the county, are subject to the identical front yard setback standard. A deviation from the requirement is difficult to obtain, as authorization of a variance is only to be granted in situations where an owner is

		being denied rights and privileges (i.e., development of the property) because of a feature of the site that was not created or caused by the owner.
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CONCLUSION

The Zoning Ordinance authorizes the Board of Adjustment to hear and determine appeals from the decisions of the Zoning Administrator in denying variances. However, without addressing the criteria for approval, the owner is at a further disadvantage in attempting to justify the proposal. As a matter of law, variances are not the appropriate remedy for a general condition. The reasons listed by the owner at the ZA hearing were so general and of a recurring nature that they were of no significance when compared to the criteria for approval.

Similarly, a self-inflicted hardship is not the grounds for a variance. Any hardship – and none have been specifically mentioned for this request – must relate to the physical characteristics of the property, and in turn, those characteristics must have a result on the lot that renders the site both useless without the variance, as well as significantly different than any other parcel in the area. Claims of minor deviations from the standard, personal or economic hardships that might be created if the variance is not approved, or a reported ignorance of the law clearly fall short of the measure used to judge a variance request, as these reasons only address the temporary plight of an appellant. Although a variance may relieve these issues at the time, the effect on the neighborhood will be long lasting.

Finally, a hardship must be severe and cannot adversely affect adjacent property or the character of the zoning district. Typically, owners must prove that they will not receive special privileges generally denied in the area and that they are being denied rights enjoyed by others before a variance can be granted. The correct authorization of a variance merely grants an owner equal status on this point. There is such thing as necessary hardship. It may seem to some to be a rank injustice, difficult to believe, and not caused by the applicant, but it is essential considering the overall purposes of the ordinance and ability of the owner to obtain reasonable use of the land.

RECOMMENDATION

Denial of BA-20100011/ZA-20100031, thereby upholding the previous determination of the Zoning Administrator.

Brennon Williams
Zoning Administrator